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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 PEDRO NAVARRO,

7 Petitioner,

Case No. C18-1479-JCC-MAT

8 v.

REPORT AND RECOMMENDATION

9 JEFFREY A. UTTECHT,

10 Respondent.

11  
12 INTRODUCTION AND SUMMARY CONCLUSION

13 This is a federal habeas action brought under 28 U.S.C. § 2254. This matter comes before  
14 the Court at the present time on petitioner's requests for a preliminary injunction to prevent public  
15 notification of his sex offender status upon his release from confinement in January 2019.  
16 Respondent opposes petitioner's requests. This Court, having reviewed petitioner's requests for  
17 preliminary injunctive relief, respondent's responses thereto, and the balance of the record,  
18 concludes that petitioner's requests for preliminary injunctive relief should be denied.

19 DISCUSSION

20 Petitioner submitted his federal habeas petition to the Court for filing on October 9, 2018.  
21 (*See* Dkt. 1.) Petitioner indicates therein that he is seeking to challenge his 2013 convictions in  
22 King County Superior Court on eight counts of communicating with a minor for immoral purposes  
23 and two counts of extortion with sexual motivation, for which a sentence of 114 months

1 confinement was imposed. (*See* Dkt. 6 at 1.) Petitioner identifies in his petition eleven grounds  
2 for relief from his convictions. (*See id.* at 5-24.) Respondent has not yet filed an answer to  
3 petitioner's petition.

4 Subsequent to the submission of his petition, petitioner filed a motion for preliminary  
5 injunction followed shortly thereafter by a nearly identical motion which petitioner identified as a  
6 motion to prevent public notification. (*See* Dkts. 8, 13.) Petitioner indicates in those motions that  
7 he is scheduled to be released from custody by January 24, 2019, and he asks that local law  
8 enforcement be ordered to refrain from disclosing to the public that he is a registered sex offender  
9 pending the outcome of this federal habeas action. (*Id.*) Petitioner makes clear that he is not asking  
10 to be relieved of the duty to register as a sex offender upon his release, he is merely asking that  
11 law enforcement be precluded from disclosing to the public that he is a registered sex offender  
12 until the Court renders a decision on his petition. (*See id.*)

13 The basic function of a preliminary injunction is to preserve the *status quo ante litem*  
14 pending a determination of the action on the merits. *Los Angeles Memorial Coliseum Com'n v.*  
15 *National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). To obtain preliminary injunctive  
16 relief, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of  
17 irreparable harm to the moving party in the absence of preliminary relief; (3) that a balance of the  
18 equities tips in favor of the moving party; and (4) that an injunction is in the public interest. *Winter*  
19 *v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Supreme Court has made clear that  
20 the mere possibility of future injury is not sufficient to support the issuance of a preliminary  
21 injunction. *See id.* at 22.

22 Petitioner asserts that he will be irreparably harmed if his request for preliminary injunctive  
23 relief is not granted and this Court subsequently rules in his favor on his habeas petition. Petitioner

1 points out that if this Court grants his petition for federal habeas relief and orders a new trial, and  
2 the state then either refuses to retry him or he is acquitted after a new trial, he would not have a  
3 duty to register as a sex offender. Petitioner argues that disclosing his sex offender status prior to  
4 the outcome of this action would “subject [him] to community obloquy and scorn that will damage  
5 him personally and professionally if this court subsequently grants the petition.” (*See* Dkt. 8 at 5;  
6 Dkt. 13 at 5.)

7 The relief requested by petitioner in his motions for preliminary injunctive relief is simply  
8 not available to him in this federal habeas action. “[T]he essence of habeas corpus is an attack by  
9 a person in custody upon the legality of that custody, and . . . the traditional function of the writ is  
10 to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Petitioner,  
11 by way of the instant motions, is not seeking release from custody, he is instead seeking a directive  
12 to local law enforcement to shield him from the negative stigma attached to sex offender  
13 registration. Such a directive is not within the scope of relief available on federal habeas review.

14 Moreover, petitioner’s motions make clear that he is seeking injunctive relief against  
15 individuals and/or entities who are not parties to this action. A petitioner who is currently in  
16 custody under a state court judgment must name as the respondent the state officer having custody  
17 of him or her. *See* Rule 2(a) of the Rules Governing Section 2254 Cases in the United States  
18 District Courts. Typically, this person is the warden of the facility in which the petitioner is  
19 incarcerated. *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9<sup>th</sup> Cir. 1994). Petitioner  
20 has properly named his current custodian as the respondent in this action. However, petitioner  
21 does not seek to enjoin the conduct of his custodian, he seeks to enjoin the conduct of the local  
22 law enforcement officials who will ultimately determine what information, if any, shall be released  
23 to the public regarding petitioner’s sex offender status and his offenses. No such individuals or

1 entities are parties to this action nor, in fact, would any such individuals or entities be proper parties  
2 in a federal habeas action. This Court simply has no authority to issue orders against individuals  
3 or entities who are not parties to this action. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*,  
4 395 U.S. 100 (1969).

5 Because petitioner has requested relief in his motions which is not available in a federal  
6 habeas action, and because, in any event, the individuals and/or entities whose conduct petitioner  
7 seeks to enjoin are not parties to this action, petitioner's requests for preliminary injunctive relief  
8 must be denied.

#### 9 CONCLUSION

10 Based on the foregoing, this Court recommends that petitioner's motions for preliminary  
11 injunctive relief be denied. A proposed order accompanies this Report and Recommendation.

#### 12 OBJECTIONS

13 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
14 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report  
15 and Recommendation is signed. Failure to file objections within the specified time may affect  
16 your right to appeal. Objections should be noted for consideration on the District Judge's motions  
17 calendar for the third Friday after they are filed. Responses to objections may be filed within  
18 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be  
19 ready for consideration by the District Judge on **January 18, 2019**.

20 DATED this 26th day of December, 2018.

21 

22 Mary Alice Theiler  
23 United States Magistrate Judge